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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. GREGORY TYSON VANCIL, Defendant and Appellant.	2d Crim. No. B290110 (Super. Ct. No. F498792) (San Luis Obispo County)

Gregory Tyson Vancil appeals from the judgment entered after he pleaded no contest to possession of metal knuckles, (Pen. Code, § 21810),[1] a felony, and resisting a police officer (§ 148, subd. (a)), a misdemeanor. He contends the trial court erred when it denied his motion to suppress. We affirm.

Facts

At about 12:30 a.m., San Luis Obispo County sheriffs' deputies Christopher Langston and Mike Norris were patrolling

[1] All statutory references are to this code unless otherwise stated.

a rural area in Santa Maria when they saw a car swerving in its lane and crossing the fog line. After the car crossed the fog line a second time, Deputy Langston initiated a traffic stop. Appellant was the driver. He provided his driver's license on request and cooperated with an initial field sobriety test.

Deputy Langston suspected appellant was under the influence of drugs. He asked appellant to get out of the vehicle, to continue the field sobriety test. Appellant got out of the car, but was otherwise uncooperative. He kept putting his hand in his pocket, even after Deputy Norris told him to leave his hand out.

Deputy Langston told appellant he was going to pat him down for weapons and to put his hands behind his back. Instead, appellant put his hands on the push bar of the patrol car. Langston testified appellant "gave me his left hand with the palm open and his right hand he reluctantly brought back with a closed fist." Langston asked what appellant had in his hand, "took control of his wrist and noticed there was a part of a clear, plastic baggie protruding from his fingers." At that point, appellant's right hand was behind his back. Appellant suddenly pulled his hand in front of himself. Langston and Norris tried to regain control of appellant's arm. Appellant struggled with them. As they struggled, appellant "kept pulling his hands in front of him towards his waistband." Eventually, appellant ripped open the baggie, spilling a white powder over the patrol car.

Langston took appellant to the ground and gained control of him. As he did so, Langston broke a bone in his right hand. Langston's injury required surgery and it took about three months for him to recover and return to work. The baggie in appellant's hand contained methamphetamine.

Appellant was placed under arrest. Other deputies arrived and searched appellant's vehicle. The search disclosed metal knuckles and a useable amount of heroin.

Procedural History

Appellant was initially charged with possession of heroin (Health & Saf. Code, § 11350, subd. (a)), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), resisting an executive officer (§ 69), possession of metal knuckles (§ 21810), and destroying evidence. (§ 135, subd. (a).) Appellant filed a motion to suppress evidence of these offenses on the theory that the initial vehicle stop was not supported by reasonable suspicion.

The trial court agreed, concluding the initial stop was improper because there was insufficient evidence of "pronounced erratic driving." As a consequence, the trial court suppressed the evidence of appellant's impaired driving. It suppressed evidence of the methamphetamine possession for the same reason.[2] The trial court concluded, however, that evidence found in appellant's car was admissible because the vehicle search occurred after his lawful arrest for resisting.

In a subsequent clarification of its order, the trial court noted that it found "Defendant's actions in physically resisting and interfering with the deputy attempting to conduct a pat-down for weapons eminently 'were independent, intervening acts sufficiently distinct from the illegal detention' so as to dissipate any taint from the illegal detention. [Citation.] Defendant chose to not cooperate with a reasonable request

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[2] The propriety of this trial court ruling is not before us. It seems to be at variance the rule allowing a traffic stop for suspected driving under the influence of alcohol and/or drugs.

necessary to ensure officer safety. . . . [¶] This Court finds that there is a distinction between the officer noticing the baggie in Defendant's fist and the subsequent events constituting the Penal Code § 69 charge. The former would likely not have been discovered but for the illegal stop, while the latter was the result of an independent decision that Defendant made, constituting an intervening circumstance."

After the motion to suppress was resolved, respondent amended the information to allege a misdemeanor violation of section 148, subdivision (a)(1). Appellant pleaded guilty to the section 148 offense and to a felony violation of section 21810 based on his possession of brass knuckles.

Discussion

Appellant contends the trial court erred when it declined to suppress the evidence found in his car. He argues he was entitled to resist the pat down search because it occurred after the illegal vehicle stop. The vehicle search occurred after the illegal stop and illegal arrest for resisting. Items discovered in that search were "'fruit of the poisonous tree'" created by the illegal initial stop. We are not persuaded.

"The elements of a violation of section 148, subdivision (a)(1) are the following: ""(1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties."" [Citation.] However, 'it is no crime in this state to nonviolently resist the unlawful action of police officers.' [Citation.] Thus, '[b]efore a person can be convicted of [a violation of section 148, subdivision (a)] there must be proof

beyond a reasonable doubt that the officer was acting lawfully at the time the offense against him was committed.' [Citation.]" (*In re Chase C.* (2015) 243 Cal.App.4th 107, 113-114.)

As the court emphasized in *In re Chase C.*, supra, 243 Cal.App.4th 107, an individual has a First Amendment right to "*verbally* protest and challenge" the actions of peace officers. (*Id.* at p. 115.) If the individual's conduct does not involve physical interference with the officer, it "does not rise to the level of a section 148 violation." (*Ibid;* see also *People v. Quiroga* (1993) 16 Cal.App.4th 961, 966.) It is equally true, however, that neither the First Amendment nor the exclusionary rule will "immunize crimes of violence committed on a peace officer, even if they are preceded by a Fourth Amendment violation." (*In re Richard G.* (2009) 173 Cal.App.4th 1252, 1261; see also *In re Chase C.*, *supra*, at p. 117.)

Our reasoning in *In re Richard G.* guides the result here. In that case, a juvenile was detained by police officers after they received an anonymous tip concerning men creating a disturbance, possibly with a handgun. The juvenile believed he had been unfairly detained. He refused to obey any police command and threated to harm the officer who was giving orders. The officer physically grabbed the juvenile who resisted and punched the officer. We concluded the detention was based on reasonable suspicion. We further noted that, even if the detention had been improper, we would not have suppressed evidence of the juvenile's violent behavior and threatening statements.

We reasoned, "Broadly speaking, evidence may be excluded as 'fruit of the poisonous tree' where its discovery 'results from' or is 'caused' by a Fourth Amendment violation.

[Citation.] Exclusion is not required, however, . . . where "'the connection between the lawless conduct of the police and the discovery of the challenged evidence has 'become so attenuated as to dissipate the taint.'" [Citation.]" (*In re Richard G.*, *supra*, 173 Cal.App.4th at p. 1262.) When the causal link between the Fourth Amendment violation and the evidence of a crime "is blocked by an intervening, independent act, the 'poison' is declared purged and its evidentiary 'fruit,' is admissible. [Citation.]" (*Ibid.*)

"An individual's decision to commit a new and distinct crime, even if made during or immediately after an unlawful detention, is an intervening act sufficient to purge the 'taint' of a theoretically illegal detention. . . . Under those circumstances, the defendant's new criminal behavior breaks the causal link between any constitutional violation and evidence of the new crime." (*In re Richard G.*, *supra*, 173 Cal.App.4th at p. 1262.)

For the same reason, evidence of appellant's resisting and of the items found in his car was admissible, despite what the trial court concluded was an improper vehicle stop. Once detained, appellant disobeyed Deputy Langston's order to keep his hands behind his back. He abruptly yanked his arm away as Deputy Langston was attempting to handcuff him and then struggled with the deputy until he was subdued. Appellant's decision to physically resist being handcuffed was an intervening, independent act that dissipated or purged any "taint" from the illegal vehicle stop and detention. (*In re Richard G.*, *supra*, 173 Cal.App.4th at p. 1262; see also *People v. Cox* (2008) 168 Cal.App.4th 702, 712 [choice to resist arrest after illegal detention and to flee "were independent, intervening acts,

sufficiently distinct from the illegal detention to dissipate the taint"].) Appellant was properly arrested for resisting the deputies. As a consequence of his arrest, his car was properly impounded and subject to an inventory search. (Veh. Code, § 22651; *People v. Redd* (2010) 48 Cal.4th 691, 721.)

Conclusion

The trial court correctly denied the motion suppress evidence of appellant's resistance to the pat down search and of the contents of his car. The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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